

# **CUSTODY AND PARENTING TIME**

## **INVESTIGATION MANUAL**

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## **Introduction**

MCL 552. 505(d) provides, “the friend of the court is to investigate all relevant facts and make a written report and recommendation to parents and to the court regarding child custody....” This manual provides friend of the court investigators with resources to assist them in recommending to the court the amount of contact and decision-making authority the parents will have with a child. This manual is intended to be neither mandatory nor exhaustive. Rather, the contents are guidelines that may help the investigator apply the legal requirements to complete a report and recommendation.

### **How this manual is constructed**

The manual is comprised of several sections divided by tabs. The sections consist of the following: 1) A factor from the Child Custody Act or a statutory consideration (e.g., established custodial environment, third party custody, change of domicile); 2) Interpretation - is an explanation of the factor or legal consideration drawn from appellate court decisions; 3) Considerations - are issues an investigator may wish to consider to help make a determination concerning the factor; and 4) Practice Tips - suggestions that will assist the investigator in obtaining information.

With the exception of the third party custody investigations section, this manual uses the term “parent” to represent parties in a domestic relations case.

In using this manual, the reader should be aware of the following concerning each section:

### **Interpretation**

The information explaining each topic is drawn from appellate court decisions. Unless a court decision has addressed the topic, the explanation will not attempt to further define the topic beyond the statutory language. Appellate courts normally review a case giving deference to the findings of fact made by the lower court. Therefore, the information presented in this manual usually indicates whether it is permissible to consider a fact or to arrive at a conclusion. Unless the court decision requires or prohibits a specific result, an individual should feel free to analyze the facts of a particular case differently.

### **Considerations**

For the purpose of this manual, considerations are issues related to the child custody factors that should be contemplated by the investigator when gathering information relevant to the custody or parenting time investigation. The State Court Administrative Office would like to thank Andrew Crisenbery, Jackson County Friend of the Court, for his contribution to this section of the manual.

## **Practice Tips**

Practice tips are recommendations that can be used to gather information that is necessary to complete an investigation. Practice tips may be structured as questions to ask, or statements that identify the tasks necessary to retrieve information.

## **What Is a Custody or Parenting Time Investigation?**

The word “investigation” means to inquire into or systemically examine a matter in detail.<sup>1</sup> The purpose of a custody or parenting time investigation is to inquire, examine, consider, summarize information, and make a recommendation to the court. The court makes the ultimate custody and parenting time decisions after applying the law to all relevant evidence. The investigator’s responsibility to the court, parties, and children is to do an accurate assessment and make a recommendation to the court for custody or parenting time.

The investigator should inform the children, parents, other parties involved, and attorneys of the purpose, nature, and method of the child custody or parenting time investigation early on in the process.

## **First Steps in the Investigation Process**

The investigator should review the pleadings and questionnaires before interviewing the parents. While reviewing the pleadings and questionnaires, the investigator should attempt to identify any indications of domestic violence as well as other issues that are related to the best interests of the child. If there are indications (e.g., complaints for divorce, pleadings, sworn statements) of domestic violence, the investigator should refer to office policy on screening domestic violence cases and take the appropriate steps. The investigator should attempt to identify and concentrate on those issues that are in dispute and spend less time on those where it appears the parents are in agreement.

## **The Child Custody Factors**

The majority of the information that is gathered for the investigation will come as a result of addressing the Child Custody Act with the parents and the child. Factors of the Child Custody Act must be addressed for both custody and parenting time investigations. The following is a brief description as to the use of the 12 factors of the Child Custody Act when conducting a custody investigation. The application of the Child Custody Act for parenting time investigations is explained in the Introduction for Parenting Time Investigations.

The Child Custody Act addresses the best interests of the child and requires that the investigator evaluate the parties on 12 criteria. “This is not to suggest that the resolution of a custody case

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<sup>1</sup> American Heritage Dictionary, Houghton Mifflin Company, 1982

lies in a box score evaluation; the parent who is accorded the winner on [a majority] of the factors should necessarily “win.”<sup>2</sup> The words of the court of appeals concerning the role of the judge could equally apply to a custody investigation:

“A child custody determination is much more difficult and subtle than an arithmetical computation of factors. It is one of the most demanding undertakings of a trial judge, one in which he must not only listen to what is said to him and observe all that happens before him, but a task requiring him to discern and feel the climate and chemistry of the relationships between children and parents. This is an inquiry in which the court hopes to hear not only the words but the music of the various relationships.”<sup>3</sup>

In conducting the investigation, the investigator may find that the same facts can be considered under different factors. For instance, “the factors have some natural overlap in that a child’s stated preference to live with one parent may be indicative of greater emotional ties with that parent.”<sup>4</sup> Nor are all of the factors necessarily equal. When the parents consider a factor to be major, it is appropriate to consider that factor to be more important.<sup>5</sup> While one factor may offset some of the factors found in favor of one of the parents, it should not completely offset all of the other findings when the other parent either prevailed or was found equivalent.<sup>6</sup>

When there is more than one child in a case, a separate determination must be made for each child if necessary.<sup>7</sup>

When the investigator meets with the parents, requests may be made for references and release forms to be completed. References should be requested from individuals who have seen the parent or parents interact with the children (e.g., child care providers, teachers, and coaches). Release forms are used to gather information from those individuals who have been professionally involved with the family (e.g., doctors, counselors, teachers, etc.), but may not release information without approval from the parents. There is a section found later in the manual dedicated to gathering information.

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<sup>2</sup> *Dempsey v Dempsey*, 96 Mich App 276, 289 (1980).

<sup>3</sup> *Dempsey, Supra.* at 289.

<sup>4</sup> *Carson v Carson*, 156 Mich App 291, 299-200 (1986).

<sup>5</sup> *McCain v McCain*, 229 Mich App 123 (1998).

<sup>6</sup> *McCain, supra.*

<sup>7</sup> *Wiechmann v Wiechmann*, 212 Mich App 436 (1995).

In addition to custody and parenting time investigations, this manual also addresses established custodial environment, change of residence, change of domicile, and third party custody investigations. There are also sections dedicated to gathering information and additional recommendations.

With all investigations it is important to give your report credibility by accurately reporting both positive and negative information concerning the parents and children. The reasons articulated for assigning an advantage to one parent over another should not be limited to the positive information about the favored parent nor to the negative information about the other parent.

## **Definitions of Custody**

The following are descriptions of possible custody arrangements the reader may want to become familiar with before referring to other sections in this manual

**Joint Custody:** At the request of either parent, the court must consider ordering joint custody.<sup>8</sup> If the parents agree on joint custody, the court must order it unless the court determines that joint custody is not in the best interests of the child.<sup>9</sup> The court may consider joint custody without a parent's request. The fact that the trial court must consider an award of joint custody does not create a presumption in favor of it.<sup>10</sup>

The statute defines joint custody to include either or both alternating physical custodial arrangements and joint decision-making authority.<sup>11</sup> "In order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing-including health care, religion, education, day to day decision-making and discipline-and they must be willing to cooperate with each other in joint decision-making."<sup>12</sup> However, ability to cooperate is not the sole factor to be considered in determining whether parents should have joint custody. Even if the parents cannot cooperate, if they can provide different strengths to supplement each other in raising the children and they can agree on basic child rearing issues, joint custody is an

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<sup>8</sup> MCL 722.26a(1).

<sup>9</sup> MCL 722.26a(2). If the court does not award joint custody under these circumstances, it must state on the record its reasons. *Arndt v Kasem*, 156 Mich App 706 (1986) (finding the court had failed to state its reasons because the record was devoid of any consideration of the best-interest factors).

<sup>10</sup> *Wellman v Wellman*, 203 Mich App 277 (1994).

<sup>11</sup> MCL 722.26a((7)).

<sup>12</sup> *Fisher v Fisher*, 118 Mich App 227, 232 (1982); MCL 722.26a(1)(b).

appropriate option.<sup>13</sup> In the event joint custodians are unable to agree on important matters affecting the child, those matters must be decided using the best interests of the child.<sup>14</sup>

**Sole Custody:** There is no legal definition for sole custody. For the purpose of this manual sole custody is defined as when one parent provides most of the day to day care for a child and has the exclusive right to make major decisions for the child.<sup>15</sup> If the court believes the parents cannot work together for the benefit of their child, sole custody is usually awarded to one parent. The other parent may be given parenting time, as determined by the court. If parenting time is ordered, the non-custodial parent is responsible for making routine and emergency decisions for the child during parenting time.<sup>16</sup>

We hope this manual proves to be a valuable asset to those who are responsible for conducting custody and parenting time investigations and making recommendations to the court.

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<sup>13</sup> *Nielsen v Nielsen*, 163 Mich App 430 (1987).

<sup>14</sup> *Lombardo v Lombardo*, 202 Mich App 151 (1993).

<sup>15</sup> It is unclear what role the division of time plays in a definition of sole custody. The statute speaks in terms of alternating time with each parent without setting a minimum period of time. In *Fisher v Fisher*, 118 Mich App 227 (1982). The court while approving a lower court's decision granting custody with parenting time, indicates that sole custody is the exclusive right to make important decisions for the child. "If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children." *Id* @ 233. See also *Lombardo v Lombardo*, 202 Mich App 151 (1993) (one parent had physical custody for not less than 128 days each year).